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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3950 OF 2005

Shri Babu Sattu Dhadas ... Petitioner

Vs.

Smt. Indirabai Krishnaji Kulkarni
(Since deceased) through L.R.
1A. Ramchandra K. Kulkarni & Ors. ... Respondents

Mr. S. V. Sakhare for the petitioner.

Mr. S. G. Deshmukh for respondent 1A.

CORAM: SMT. RANJANA DESAI, J.

DATED: 22ND SEPTEMBER, 2005.

P.C.:-

1. The petitioner is original defendant 1 in Special Civil Suit No.46 of 1982. Some facts, which are material for the purposes of this writ petition may have to be stated.

2. The suit property was ancestral property of one Krishnaji Kulkarni, the husband of respondents, who are the plaintiffs. Proceedings under the provisions of the Maharashtra Agricultural Lands (Ceiling & Holding) Act, 1961 (for short, "the said Act") were initiated against Krishnaji and his son Ramchandra and, land admeasuring 118 Acres was released under the said Act. In the year 1957, Krishnaji effected partition of the ancestral property and land admeasuring about 118 Acres was allotted to the share of his wives namely the plaintiffs.

The petitioner/defendant 1 claims to be the tenant and in possession of the suit property. The said Krishnaji Kulkarni died in the year 1973. It appears that on 5/2/1972, an enquiry was held under the said Act and it was held that the suit land was not surplus and it was free for sale. On 16/2/1979, the plaintiffs executed an agreement in favour of defendants 1 and 2 for sale of the suit property for Rs.52,000/- and Rs.5,000/- was paid by defendants 1 and 2 by way of earnest money. The transaction was to be completed within five months and the remaining amount of Rs.47,000/- was to be paid to the plaintiffs. It appears that a revision came to be filed under the provisions of the said Act in respect of the suit land to the Additional Commissioner, Pune. On 24/9/1979, the Additional Commissioner set aside the earlier decision and remanded the matter to the Tribunal for fresh enquiry. On 29/7/1980, a fresh agreement was executed between the plaintiffs and defendants 1 and 2. It was agreed that till the completion of the sale deed, defendants 1 and 2 were to give one half share of crops to the plaintiffs and till the execution of the sale deed, cattles of the plaintiffs were allowed to be grazed on the suit land. The suit land was kept in possession of the defendants. It was agreed that the portion out of 100 Acres which would be released from the said Act would be sold to defendants 1 and 2 in equal shares. It is the plaintiffs' case that defendants committed breach of the said agreement in the next year. The plaintiffs then filed the instant suit for possession of the suit land

and for mesne profits. The plaintiffs also prayed for cancellation of the agreements dated 16/2/1979 and 29/7/1980.

3. According to the defendants, on 13/8/1982, a fresh enquiry was held as directed by the Additional Commissioner and the suit land was held surplus i.e. not free for sale. According to the defendants, on 15/9/1986, the plaintiffs exercised their option under section 16 of the said Act and surrendered the land to the Government. Distribution proceedings were initiated under section 27 of the said Act. On 24/9/1986, Tahsildar took steps for distribution of the land to the landless persons and stuck the necessary notice. In the meantime, on 3/4/1987, Special Civil Suit No.46 of 1982 was decreed and it was held that the plaintiffs were entitled to get possession of the suit land from defendants 1 and 2 and that the plaintiffs were entitled to recover Rs.2,000/- by way of past mesne profits for the year 1981-82 from defendant 1. But, it appears that defendant 1 filed Writ Petition No.480 of 1988 in this court challenging the action initiated by the Tahsildar under section 27 of the said Act and this court on 9/3/2001 allowed the petition in terms of prayer clause (e) of the petition and the distribution proceedings were held illegal by this court.

4. It is also an admitted position that defendant 1 filed an appeal challenging the decree passed in Special

Civil Suit No.46 of 1982 being Regular Civil Appeal No.102 of 2000. The said appeal was dismissed by the IIIrd Additional District Judge, Sangli. A second appeal being Second Appeal No.736 of 2003 was filed by defendant 1 in this court and on 23/9/2003, the learned single judge of this court dismissed the second appeal thereby confirming the decree passed in Special Civil Suit No.46 of 1982.

5. It appears that on 17/3/2004, the executing court issued the possession warrant. In the execution proceedings, the petitioner/defendant 1 filed an application (Ex-48) praying that the execution proceedings may be quashed. By the impugned order, the learned judge has rejected that application and issued the possession warrant and, hence, this writ petition.

6. I have heard Mr. Sakhare, the learned counsel appearing for the petitioner and Mr. Deshmukh, the learned counsel appearing for the respondents. The learned counsel for the petitioner contended that the decree has become unexecutable because the suit land has become free for sale on 9/3/2001 when this court held in Writ Petition No.480 of 1988 that the distribution proceedings started under section 27 of the said Act are illegal. Therefore, the plaintiffs have no right to cancel the agreements dated 16/2/1979 and 29/7/1980. Since, the High Court has held that the land was encumbered and could not have been surrendered to the

State Government, the executing court could not have issued the possession warrant. The learned counsel contended that as per the agreements dated 16/2/1979 and 29/7/1980, defendant 1 is ready and willing to purchase the land. There was no time limit for execution of the agreements and, therefore, the decree cannot now be executed under these circumstances.

7. I am unable to accept the submissions of the learned counsel for the petitioner. It is true that in Writ Petition No.480 of 1988, this court has on 9/3/2001 held that the distribution proceedings started under section 27 of the said Act are illegal. However, my attention was drawn by the learned counsel for respondent 1 to the judgment of this court in Second Appeal No.736 of 2003 arising out of the judgment and decree passed in Special Civil Suit No.46 of 1982 in favour of the plaintiffs. It appears from the judgment that the attention of the court was drawn to the order passed in Writ Petition No.480 of 1988. Submissions were also advanced on the basis of the said judgment and the learned single judge has observed that the counsel for defendant 1 has referred to the writ petition filed by defendant 1. The learned single judge has referred to similar contentions advanced by the learned counsel for defendant 1 before me and observed that none of the submissions have force nor they can be considered in favour of the defendants. The learned single judge has further observed that the courts below have scanned and scrutinized each of the circumstances

properly and have come to the right conclusion. The appeal was then dismissed. Therefore, the submissions based on the judgment of this court in Writ Petition No.480 of 1988 have been rejected by the learned single judge. I am bound by those observations. It is not open for me to reopen any settled questions now. It is admitted that the judgment passed by this court in the second appeal has not been challenged by the petitioner. Therefore, the decree passed in Special Civil Suit No.46 of 1982, which is confirmed by the High Court has to be executed. There is no substance in the petition.

Petition is rejected.

8. At this stage, the learned counsel for the petitioner states that the petitioner wants to challenge this order in the Supreme Court and, therefore, he seeks stay of the Darkhast proceedings. Mr. Deshmukh objects. In the circumstances of the case, the Darkhast proceedings are stayed for three weeks from today.

(SMT. RANJANA DESAI, J.)